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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,356	09/26/2003	Maria G. Castellanos	200310994-1	3043

22879 7590 05/28/2009
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EXAMINER

HAIDER, FAWAAD

ART UNIT	PAPER NUMBER
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3627

NOTIFICATION DATE	DELIVERY MODE
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05/28/2009

ELECTRONIC

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/672,356
Filing Date: September 26, 2003
Appellant(s): CASTELLANOS ET AL.

Dan Hu
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/12/09 appealing from the Office action mailed 9/18/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments **after final** rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,864,483	Brichta	1-1996
6,523,027	Underwood	7-1999
2003/0079160	McGee et al	7-2002
2004/0153563	Shay et al	3-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "sufficient" in claim 30 is a relative term which renders the claim indefinite. The term "sufficient" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5 and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brichta (5,864,483) in view of Underwood (6,523,027).

Re Claim 1: Brichta discloses a plurality of component SLAs in a computing system that operate to form a composite SLA (see col.6, lines 12-19, col.11, lines 32-41). However, Brichta fails to disclose a historical metric value. Underwood discloses comparing a historical metric value for each of the plurality of component SLAs to their respective baseline metric value to determine if each historical metric is sufficient to ensure that the composite SLA is met, and calculating a baseline metric value (see col.249, lines 9-28). From the teaching of Underwood, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Brichta's invention with Underwood's use of a historical metric value in order to have "a reference point for historical trend analysis and a source of network portion of the present (see Underwood col.249, lines 9-16)."

Re Claims 2, 4: Brichta discloses wherein calculating the baseline metric value for each of the plurality of component SLAs further comprises calculating a baseline success rate (or baseline failure rate) for each of the plurality of component SLAs from historical data (see col.3, line 46).

Re Claims 3, 5: Underwood discloses wherein comparing the historical metric value for each of the plurality of component SLAs further comprises comparing a historical success rate (or historical failure rate) for each of the plurality of component SLAs to their respective baseline success rates (or respective baseline failure rates) to determine if each historical success rate is greater than or equal (or each historic failure rate is less than or equal) to each respective baseline success rate (see col.249, lines 9-28).

Re Claims 20-22: Brichta discloses further comprising indicating that the composite SLA cannot be met in response to determining that any of the historical metric values is insufficient when compared to the respective baseline metric value, any of the historical success rates is less than the respective baseline success rate, and any of the historical success rates is greater than the respective baseline success rate (see Figure 3B and col.11, lines 26-64).

Re Claim 23: Brichta discloses wherein calculating the baseline metric value for each of the plurality of component SLAs is based on a desired success rate for a composite system having multiple component services associated with the corresponding component SLAs (see Figure 3B and col.11, lines 26-64).

Re Claim 24: Underwood discloses wherein calculating the baseline metric value for each of the plurality of component SLAs is further based on: calculating a combined historical failure rate of the component services; and determining a contribution of each component service to the combined historical failure, wherein each baseline metric value is based on the respective determined contribution (see col.249, lines 9-28).

5. Claims 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brichta (5,864,483) in view of Underwood (6,523,027) and further in view of McGee et al (2003/0079160).

Re Claims 25-29: McGee discloses: wherein calculating a combined metric value from historical data for sequential component SLAs that operate sequentially to contribute to the composite SLA and comparing the combined metric value to a target combined metric value to determine if the combined metric value is sufficient to meet the target combined metric value; wherein calculating the combined metric value further comprises calculating a component probability distribution function (PDF) for each sequential component SLA; wherein calculating the combined metric value further comprises computing a composite PDF from the component PDFs; wherein computing a composite PDF from the component PDFs further comprises performing a convolution of the component PDFs for each component SLA; wherein calculating the combined metric value further comprises: calculating a cumulative distribution function (CDF) from the composite PDF; determining the combined metric value by locating a value of the cumulative CDF at the target combined metric value (see [0069, 0106-0107-0148]).

From the teaching of McGee, it would have been obvious to one of ordinary skill in the

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art at the time of the invention to modify Brichta and Underwood in order to have "statistical methods that are used to generate one or more threshold for metrics (see McGee Abstract)."

6. Claims 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGee et al (2003/0079160) in view of Shay et al (2004/0153563).

Re Claim 30: McGee discloses comparing a historical metric value for each of the plurality of component SLAs to their respective baseline metric value to determine if each historical metric is sufficient to ensure that the composite SLA is met, and discloses calculating a baseline metric value (see [0021, 0065, 0073, 0130, 0132 0227]). However, McGee fails to disclose a plurality of component SLAs. Shay discloses a plurality of component SLAs in a computing system that operate to form a composite SLA (see [0005]). From the teaching of Shay, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify McGee's invention with Shay's use of a plurality of component SLAs in order to predict "expected service levels based on measurements (see Shay Abstract)."

Re Claims 31, 33:: McGee discloses wherein calculating the baseline metric value for each of the plurality of component SLAs further comprises calculating a baseline success rate (or baseline failure rate) for each of the plurality of component SLAs from historical data (see [0065, 0073, 0130]).

Re Claims 32, 34: McGee discloses wherein comparing the historical metric value for each of the plurality of component SLAs further comprises comparing a historical success rate (or historical failure rate) for each of the plurality of component

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SLAs to their respective baseline success rates (or respective baseline failure rates) to determine if each historical success rate is greater than or equal (or each historic failure rate is less than or equal) to each respective baseline success rate (see [0065, 0073, 0110-0112, 0130]).

(10) Response to Argument

Re Claims 1, 20, 30: The applicant first argues that Brichta fails to disclose “a plurality of component SLAs in a computing system that operate to form a composite SLA.” In col.6, lines 12-19, Brichta discloses a service level standard (SLS) and a service level agreement (SLA). Brichta discloses: “The service level standard defines a general level of service which is typically afforded to customers. A service level agreement, which can be tailored to suit the needs of a particular customer, defines any level of service that differs from the service level standard.” Then, in col.11, lines 32-41, Brichta discloses both a service level agreement A (SLA A) and a service level agreement B (SLA B). In lines 46-53, Brichta goes on to discuss how they correspond to a control value.

Secondly, the appellant argues that Underwood fails to disclose “comparing a historical metric value for each of the plurality of component SLAs to their respective baseline metric value to determine if each historical metric is sufficient to ensure that the composite SLA is met.” First, Brichta discloses historical trends in 324 of Figure 7. Brichta goes on to disclose “using historical descriptive statistics (see col.2, line 25)” and “use of historical data relating to the representation of occurrences in the danger

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zone (see col.2, lines 40-42).” Then, in col.15, lines 46-50, Brichta discloses the following: “At step 324, system 10 then looks for historical trends in the information, such as, for example, the historical trending of deviations between the actual and expected number of occurrences.” Then, in col. 249, lines 9-28, Underwood discloses baseline analysis “as a benchmark to analyze troubleshooting data against, a reference point for historical trend analysis...” Again, in col. 250, line 62 to col.251, line 5, it talks about, “meaningful reports that describe how a metric is trending relative to its baseline... A threshold is a baseline set to a level of the metrics at which one wants to become aware of trends in the metric.”

Re Claims 2, 4, 31, 33: The applicant then goes on to argue that the following is not disclosed: wherein calculating the baseline metric value for each of the plurality of component SLAs further comprises calculating a baseline success rate (or failure rate). In col.3, lines 44-46, Brichta discloses “.. turnaround time, response time, or successful completion of a service request.”

Re Claims 3, 5, 24, 32, 34: The applicant then argues that the following is not disclosed: wherein comparing the historical value for each of the plurality of component SLAs further comprises comparing a historical success rate (or historical failure rate) for each of the plurality of component SLAs to their respective baseline success rates (or respective baseline failure rates) to determine if each historical success rate is greater than or equal (or each historical failure rate is less than or equal) to each respective baseline success rate. The applicant also argues that the following is also not disclosed: calculating a combined historical failure rate of the component services; and

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determining a contribution of each component service to the combined historical failure, wherein each baseline metric value is based on the respective determined contribution.

In col. 249, lines 9-28, Underwood discloses baseline analysis "as a benchmark to analyze troubleshooting data against, a reference point for historical trend analysis..."

Again, in col. 250, line 62 to col.251, line 5, it talks about, "meaningful reports that describe how a metric is trending relative to its baseline... A threshold is a baseline set to a level of the metrics at which one wants to become aware of trends in the metric."

Re Claims 21-22: The applicant argues that the following is not disclosed: indicating that the composite SLA cannot be met in response to determining that any of the historical success rates is less than (or historical failure rates is greater than) the respective baseline success rate. In Figures 3a and 3b of Brichta, it shows the mean, upper control limit, and lower control limit of the baseline rate. Then, in Figures 4a and 4b, it discusses the total occurrences, the total in the danger zone, and the total expected in the danger zone.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Fawaad Haider /fh/

Conferees:

/F. Ryan Zeender/

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Vincent Millin /vm/

Appeals Conference Specialist